

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

STEPHEN PENROSE, JAMES
THOMAS, JOSEPH GUARDINO, and
DANIEL POPE on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

BUFFALO TRACE DISTILLERY, INC.,
OLD CHARTER DISTILLERY CO., and
SAZERAC COMPANY, INC.

Defendants.

CASE NO. 4:17-CV-00294

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS' MOTION TO
DISMISS THE CLASS ACTION COMPLAINT**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that Defendants Buffalo Trace Distillery, Inc., Old Charter Distillery Co., and Sazerac Company, Inc. ("Defendants") request that, pursuant to Federal Rule of Evidence 201, the Court take judicial notice of the following documents listed below, which are not subject to reasonable dispute, and attached hereto:

Exhibit A Certificate of Label Approval ("COLA") for Old Charter issued by the Alcohol and Tobacco Tax and Trade Bureau ("TTB") on August 27, 2003.

Exhibit B COLA for Old Charter issued by the TTB on January 10, 2014.

I. LEGAL STANDARD

In ruling on a motion to dismiss, the court may consider matters that are subject to judicial notice. *Stahl v. U.S. Dep't of Agric.*, 327 F. 3d 697, 700 (8th Cir. 2003). The Court must take judicial notice, when requested by a party and provided with sufficient information, of information that is "generally known within the trial court's territorial jurisdiction" or that "can

be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b), 201(c)(2).

II. THE COURT SHOULD TAKE JUDICIAL NOTICE OF THE COLAS.

Judicial notice of the COLAs is proper. Matters of the public record, including “records and reports of administrative parties” are subject to judicial notice. *Blankenship v. Medtronic, Inc.*, 6 F. Supp. 3d 979, 983 n.1 (E.D. Mo. 2014) (taking judicial notice of FDA pre-market and supplemental approvals); *Stahl*, 327 F. 3d at 700. As such, courts regularly take judicial notice of COLAs issued by the TTB. *See, e.g., Cruz v. Anheuser-Busch, LLC*, 2015 WL 3561536, at *4, fn. 10 (C.D. Cal. June 3, 2015) (taking judicial notice of COLA); *see also Singleton v. Fifth Generation, Inc.*, 2016 WL 406295, at *3 (N.D.N.Y. Jan. 12, 2016) (same). The COLAs here are no different, and are thus properly subject to judicial notice. *See* Fed. R. Evid. 201(b).

III. CONCLUSION

For the foregoing reasons, the Court should judicially notice the Old Charter COLAs attached hereto as Exhibits A and B in connection with Defendants’ motion to dismiss.

Dated: April 6, 2017

Respectfully submitted,

/s/ William R. Bay

THOMPSON COBURN LLP

William R. Bay

(wbay@thompsoncoburn.com)

One US Bank Plaza

St. Louis, Missouri 63101

Phone: (314) 552-6008

COOLEY LLP

Michelle C. Doolin *pro hac vice pending*

(mdoolin@cooley.com)

Darcie A. Tilly *pro hac vice pending*

(dtilly@cooley.com)

4401 Eastgate Mall

San Diego, CA 92121

Phone: (858) 550-6000

*Attorneys for Defendants Buffalo Trace
Distillery, Inc., Old Charter Distillery Co.,
and Sazerac Company, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of April, 2017, a copy of the foregoing was filed electronically with the Clerk of the Court using the CM/ECF system, which in turn forwarded notification of same to all counsel of record in these proceedings.

/s/ William R. Bay